

NLWJC - KAGAN

STAFF & OFFICE - D.C. CIRCUIT

BOX 008 - FOLDER 003 DC

Kagan - Forms [1]

FOIA MARKER

**This is not a textual record. This is used as an
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Presidential Library Staff.**

Collection/Record Group: Clinton Presidential Records

Subgroup/Office of Origin: Counsels Office

Series/Staff Member: Sarah Wilson

Subseries:

OA/ID Number: 14688

FolderID:

Folder Title:

Kagan - Forms [1]

Stack:

V

Row:

13

Section:

2

Shelf:

11

Position:

3

Withdrawal/Redaction Sheet

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. form	Questionnaire for National Security Postions (14 pages)	n.d.	P6/b(6)
002. form	Supplement to Standard Form 86 (2 pages)	n.d.	P6/b(6)
003. form	Physical Qualification - Judiciary U.S. Department of Justice (6 pages)	04/08/1999	P2, P6/b(6)
004. form	ABA Personal Data Questionnaire (25 pages)	n.d.	P2, P5, P6/b(6)
005. form	Financial Disclosure Report for Calendar Year 1998 (AO-10) (4 pages)	05/24/1999	P6/b(6)
006. form	SSN (Partial), Address (Partial), Phone No. (Partial), and Personal (Partial) (7 pages)	n.d.	P6/b(6)

COLLECTION:

Clinton Presidential Records
Counsel's Office
Sarah Wilson
OA/Box Number: 14688

FOLDER TITLE:

Kagan - Forms [1]

2009-1006-F
kh558

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

P1 National Security Classified Information [(a)(1) of the PRA]
P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
P3 Release would violate a Federal statute [(a)(3) of the PRA]
P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.
PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).
RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

b(1) National security classified information [(b)(1) of the FOIA]
b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
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b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

1800 M Street, N.W.
Washington, D.C. 20036-5869
Tel. 202-467-7000
Fax: 202-467-7176

**Morgan, Lewis
& Bockius LLP**
C O U N S E L O R S A T L A W

FAX MESSAGE

Send to:

(1) Name: Ms. Elena Kagan

FAX Number: (202) 456-2878

Firm:

Telephone Number: (202) 456-5584

(2) Name:

FAX Number:

Firm:

Telephone Number:

From:

Name: Ellen K. Harrison

Floor: 9S

Operator Sending:

Telephone Number: (202) 467-7275

Time Sent:

Date Sent:

Number of Pages (INCLUDING COVER PAGE): 6

Note:

THE INFORMATION CONTAINED IN THIS FAX MESSAGE IS INTENDED ONLY FOR THE PERSONAL AND CONFIDENTIAL USE OF THE RECIPIENT(S) NAMED ABOVE. THIS MESSAGE MAY BE AN ATTORNEY-CLIENT COMMUNICATION AND AS SUCH IS PRIVILEGED AND CONFIDENTIAL. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT OR AN AGENT RESPONSIBLE FOR DELIVERING IT TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT YOU HAVE RECEIVED THIS DOCUMENT IN ERROR AND THAT ANY REVIEW, DISSEMINATION, DISTRIBUTION, OR COPYING OF THIS MESSAGE IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY TELEPHONE, AND RETURN THE ORIGINAL MESSAGE TO US BY MAIL. THANK YOU.

Comments:

Withdrawal/Redaction Marker

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kh558

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002. form	Supplement to Standard Form 86 (2 pages)	n.d.	P6/b(6)

COLLECTION:

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Counsel's Office
Sarah Wilson
OA/Box Number: 14688

FOLDER TITLE:

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**Additional Instructions for Completing Standard Form 86,
"Questionnaire for National Security Positions"**

YOU MUST READ AND FOLLOW CAREFULLY THE FOLLOWING INSTRUCTIONS WHEN COMPLETING THE STANDARD FORM 86 (SF-86). NOTE THAT IN A NUMBER OF IMPORTANT RESPECTS THESE ADDITIONAL INSTRUCTIONS VARY FROM THE INSTRUCTIONS PRINTED ON THE FORM ITSELF.

GENERAL INSTRUCTIONS

- Although many of the questions on the SF-86 ask you to provide information for the last seven years, **we require that you answer all questions with information since your 18th birthday.**
- Although the instructions on the SF-86 indicate that you may legibly print your answers, **you must type this form and all attachments.**
- It is essential that all information be provided in as much detail as requested. Ambiguous and incomplete information will impede the FBI's investigation and will cause valuable time to be lost. **Be specific: exact and complete names, dates, and addresses and explanations of answers are necessary for an expeditious handling of the investigation.** Do not abbreviate the names of cities. The inclusion of zip codes is particularly helpful.

INSTRUCTIONS REGARDING PARTICULAR QUESTIONS

8. **Citizenship:** If you are a U.S. citizen other than by birth, you must also execute the "Immigration Addendum to the SF-86."
9. **Where You Have Lived:** For apartment complexes, include the name of the complex and the specific unit number. If you lived in a residence that was leased or rented, include the name of the individual in whose name the rental agreement or lease was established.
10. **Where You Went to School:** Please list all education received including high school.
11. **Your Employment Activities:** Provide complete addresses (street/city/state/zip code) for each employment listed. Be as specific as possible (i.e., include divisions or departments, etc.)

Include all periods of unemployment, self-employment, volunteer employment, or internships. Provide names, complete addresses and telephone numbers of persons who can verify periods of unemployment or self-employment.
12. **People Who Know You Well:** Also please provide complete business addresses (including name of business), and business telephone numbers.

14.

Your Relatives and Associates: Although the SF-86 requests only the country of birth, also provide the city and state or city and country. If relatives live overseas, please indicate whether or not they are serving in the military. Provide their complete address, including city and country. Do not list APO or FPO address.

Include the full name, complete date of birth, and place of birth (city and state) of all individuals who presently reside in your household.

If any relatives or cotenants were born outside the United States and/or are a U.S. citizen other than by birth, complete the "Immigration Addendum to the SF-86" with respect to those persons.

16.

Your Military History: If you are a member of a military reserve component or National Guard unit, list the organization, its location, the name of your immediate officer and telephone number, if known.

20.

Your Selective Service Record: Inquiries regarding your own registration can be directed to the Selective Service at 708-688-6888.

22.

Your Employment Record: If you have ever been denied employment while undergoing or upon completion of a background investigation or polygraph examination, please identify the prospective employer and the date and reason for voluntary/involuntary withdrawal from consideration.

23.

Your Police Record: List all arrests, charges and convictions (except traffic fines of less than \$150.00).

24/25.

Use of Illegal Drugs and Drug Activity/Your Use of Alcohol: If you have ever abused legal or prescription drugs to the point of dependency, also list. In addition, list treatment for drug or alcohol dependency.

27/28.

Your Financial Record/Your Financial Delinquencies: If a collection procedure has ever been instituted against you by Federal, state or local authorities, please give full details. In addition, list any incidents of bankruptcy.

If you have any questions, please call the White House Counsel's Office at (202) 456-6229.

Certification

I have read and understand these supplemental instructions and have provided my answers in accordance with such instructions.

Signature _____

Printed/Typed Name _____

Date _____

Withdrawal/Redaction Marker

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003. form	Physical Qualification - Judiciary U.S. Department of Justice (6 pages)	04/08/1999	P2, P6/b(6)

COLLECTION:

Clinton Presidential Records
Counsel's Office
Sarah Wilson
OA/Box Number: 14688

FOLDER TITLE:

Kagan - Forms [1]

2009-1006-F
kh558

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RR. Document will be reviewed upon request.

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THE WHITE HOUSE

Sarah / Eric -

This wasn't so bad
after all. Did I do
everything right? Do you
have to check it with
Tuskie (Sheila Toy)?

Elena

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
005. form	Financial Disclosure Report for Calendar Year 1998 (AO-10) (4 pages)	05/24/1999	P6/b(6)

COLLECTION:

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LAWYER

ABA Personal Data Questionnaire

1. Full name and social security number.

Elena Kagan

P6/(b)(6)

2. Office and home addresses, zip codes, telephone numbers and area codes. (Name of law firm, if associated.)

Home

(until 6/1/99): 3133 Connecticut Avenue, Apt. 615
Washington, D.C. 20008
(202) 332-1763

Office

(until 6/1/99): White House
Washington, D.C. 20502
(202) 456-5584

(as of 6/1/99):

Harvard Law School
Cambridge, MA 02138
(617) 495-5000

Eric -
This has everything
except one article,
which I will get to
you Tuesday.
Elena

3. Date and place of birth.

April 28, 1960; New York, New York.

4. Are you a naturalized citizen? If so, give date and place of naturalization.

No.

5. Family status:

- a. Have you ever been married? If so, state the date of marriage and spouse's full name, including maiden name, if applicable.

No.

- b. Have you been divorced? If so, give particulars, including the date, the name of the moving party, the number of the case, the court, and the grounds. Give the name and current address of any former spouses.

No.

- c. Names of your children, with age, address, and present occupation of each.**

None.

- 6. Have you had any military service? If so, give dates, branch of service, rank or rate, serial number, present status, and type of discharge, if applicable.**

No.

- 7. List each college and law school you attended, including dates of attendance, the degrees awarded and, if you left any institution without receiving a degree, the reason for leaving.**

Harvard Law School, 1983-86, J.D., *magna cum laude*
Worcester College, Oxford University, 1981-83, M.Phil.
Princeton University, 1977-81, A.B., *summa cum laude*

- 8. List all courts in which you have been admitted to practice, with dates of admission. Give the same information for administrative bodies which require special admission to practice.**

United States District Court for the District of Maryland, 7/13/90
United States District Court for the District of Columbia, 2/5/90
District of Columbia Court of Appeals, 2/17/89
New York State Court of Appeals, 7/19/88

- 9. Describe chronologically your law practice and experience after graduation from law school, including:**

- a. whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk.**

Hon. Thurgood Marshall, United States Supreme Court, 1987-88.

Hon. Abner J. Mikva, United States Court of Appeals for the District of Columbia, 1986-87.

- b. whether you practiced alone, and if so, the addresses and the dates.**

I have never practiced alone.

- c. **the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, the nature of your connection with each, and the names, addresses and current telephone numbers for individuals who have direct personal knowledge about your work at such law firm, company or government agency.**

Harvard Law School, Cambridge, MA 02138
Visiting Professor, June 1999-.

Dean Robert Clark
Harvard Law School
Cambridge, MA 02138
(617) 495-4601

Because I have not yet started at Harvard and do not know Dean Clark very well, I am also including the name of a Harvard professor who was formerly a colleague of mine at the University of Chicago:

Professor Anne-Marie Slaughter
Harvard Law School
Cambridge, MA 02138
(617) 496-4451

Executive Office of the President, White House, Washington, D.C. 20502
Deputy Assistant to the President for Domestic Policy and Deputy Director,
Domestic Policy Council, 1997-99.
Associate Counsel to the President, 1995-96.

Bruce N. Reed
Assistant to the President for Domestic Policy
White House
Washington, D.C. 20502
(202) 456-6515

John M. (Jack) Quinn
Arnold & Porter
555 12th Street, N.W.
Washington, D.C. 20004
(202) 942-5027
(formerly Counsel to the President)

Hon. Abner J. Mikva
Visiting Professor of Law and Senior Fellow

Institute of Government and Public Affairs
University of Illinois at Chicago
815 West Van Buren Street
Chicago, IL 60607
(312) 996-6189
(formerly Counsel to the President)

University of Chicago Law School, 1111 E. 60th Street, Chicago, IL 60637
Professor, 1995-97.
Assistant Professor, 1991-95.

Provost Geoffrey R. Stone
University of Chicago
5801 South Ellis Avenue
Chicago, IL 60637
(773) 702-8810
(formerly Dean of Law School)

Professor Douglas Baird
University of Chicago Law School
1111 E. 60th Street
Chicago, IL 60637
(773) 702-9571
(formerly Dean of Law School)

Senate Judiciary Committee, 224 Dirksen Senate Office Building, Washington,
D.C. 20510-6275
Special Counsel, June-August 1993.

Cynthia Hogan

P6/(b)(6)

(formerly Counsel to Senate Judiciary Committee)

Williams & Connolly, 725 12th Street N.W., Washington, D.C. 20005
Associate, 1989-91.

Kevin T. Baine
Williams & Connolly
725 12th Street, N.W.
Washington, D.C. 20005
(202) 434-5010

Presidential Campaign of Michael Dukakis, 105 Chauncy St., Boston, MA
20502
Researcher, July-November 1988.

John Podesta
Chief of Staff to the President
White House
Washington, D.C. 20502
(202) 456-6797
(formerly head of research unit in Dukakis campaign)

Professor Laurence Tribe, Harvard Law School, Cambridge, MA 02138
Research Assistant, June 1986.

d. any other relevant particulars.

None.

10. a. What has been the general character of your practice, dividing it into periods with dates, if its character has changed over the years?

My career as a lawyer (following two years of clerking) can be divided into three parts: the first, from 1989 to 1991, as an associate at a major Washington law firm; the second, from 1991 to 1995, as a scholar and teacher specializing in First Amendment and other constitutional law; and the third, from 1995 to the present, as a government official engaged in both policy making and legal activity. In a month or so, I will leave the government and go back to academia, where I will teach and write about constitutional and administrative law. I view these seemingly disparate activities as integrally linked -- and as together providing a strong foundation for becoming a judge on the D.C. Circuit. Until now, I have viewed my home base as academia, but have thought of myself as a lawyer's (rather than a scholar's) scholar -- that is, a scholar who takes both doctrine and institutions seriously and is principally concerned with how the legal system actually operates. If I am fortunate enough to become a judge, I will bring this combination of scholarly and practical interests and experiences to the task of appellate judging.

I received my training in lawyering at Williams & Connolly, where I had the good fortune to have a fascinating caseload and a wide variety of legal experiences. During my years there, I spent about one-third of my time on criminal matters, principally a wide-ranging grand jury investigation of a former savings and loan owner. Another third of my time was devoted to business litigation. The final third -- which in many ways prepared me for the scholarly

work I would do later -- was spent doing First Amendment litigation, for clients as diverse as the Washington Post and Rod Serling's Twilight Zone Magazine. My work was principally at the district court level, but I also drafted several appellate briefs. I list cases from this part of my legal career in my response to question 13 and provide examples of briefs I drafted then in response to question 25.

I taught at the University of Chicago Law School between 1991 and 1995, first as an Assistant Professor and then as a full Professor with tenure; I took a leave in 1995 to work in government and resigned my position in 1997 in accordance with a university regulation limiting leaves to two years. While at Chicago, I taught classes in Constitutional Law, Labor Law, and Civil Procedure; I also taught seminars in Rights of Political Participation (principally dealing with voting rights and campaign finance issues) and Supreme Court Litigation (in which nine students role-played as the Court for a semester). (At Harvard next year, I plan to teach Constitutional Law, Administrative Law, and a seminar in the Presidency and the Law.) I received in 1993 the annual award given at the University of Chicago Law School for teaching excellence. I believe students especially appreciated my insistence on rigorous legal reasoning and my interest in legal rules and how they operate.

My scholarship at the time focused on the Free Speech Clause of the First Amendment. I think of these articles as falling within a tradition of public law scholarship -- unfortunately too neglected of late -- that believes in, and itself hopes to demonstrate, the immense intellectual richness of constitutional doctrine. In my first article, *The Changing Faces of First Amendment Neutrality*, I took two important First Amendment decisions of the 1990s, *Rust v. Sullivan* and *R.A.V. v. St. Paul*, and attempted to show their analytic connections; in the course of doing so, I hoped to shed some light on the question of how neutrality principles function in First Amendment case law. In my most ambitious piece, *Private Speech, Public Purpose*, I offered a kind of general theory of the First Amendment, arguing that most of the case law can be understood as an effort by the Court to ferret out and invalidate governmental actions based on improper motive. I am not sure whether this article is right on all counts, but I think it aids understanding of the field by combining an interest in theoretical questions with close attention to the details of doctrine. I believe that the doctrinal basis of my scholarship makes it helpful to judges and lawyers, and that the often intricate legal analysis in the work comes close (or at any rate, as close as scholarship can) to the practice of appellate judging.

Among those who know my scholarship well are Richard Fallon of Harvard, Michael McConnell of the University of Utah, and Geoffrey Stone of the University of Chicago. I have provided their addresses and phone numbers, along with the names of several other people who knew me well at the University of

Chicago, in my response to question 13. I am also providing copies of my articles and other writings in response to question 25.

While I was at the University of Chicago, I spent one summer in Washington, D.C., helping Senator Joseph Biden, then the Chairman of the Senate Judiciary Committee, prepare for the confirmation hearings of Ruth Bader Ginsburg. I thought a great deal about the practice of judging during that time -- about what qualities make a good judge and about how a judge should view his or her role. I also considered these questions, albeit on a less elevated plane, when I participated in the Chicago Council of Lawyers' extensive process for evaluating and rating candidates for elective judicial office.

The third and most recent part of my career itself has had two parts -- the first in the White House Counsel's office, the second in the Domestic Policy Council -- although they are less different from each other than might be supposed. In the Counsel's Office, I primarily acted as a lawyer for the White House policy councils and legislative office. Depending on the issue, I analyzed or drafted statutory language, devised executive actions consistent with governing law, and occasionally (principally on law reform issues) offered simple policy advice. Among the issues to which I devoted most time were welfare reform, campaign finance reform, and environmental policy. I also provided constitutional advice, in a variety of contexts, on these and other issues, including separation of powers, governmental privileges, freedom of speech, and church-state relations. One of the projects to which I devoted substantial time was a set of guidelines issued by the President on religious exercise and expression in the federal workplace.

As Deputy Director of the Domestic Policy Council, I continue to perform most of these functions, and combine them with responsibility for policy development. Sometimes the roles of policy analyst and lawyer completely merge, as with tobacco policy. Last year, I played the principal role in handling the myriad First Amendment and other constitutional issues arising from the proposed tobacco settlement, as well as in developing the Administration's statutory proposal for giving the FDA clear regulatory authority over tobacco products. More recently, I have devoted much of my time to developing the Administration's reauthorization proposal for the Elementary and Secondary Education Act, which is the central piece of federal education legislation. As a result of these and other experiences, I know a great deal about both legislative and administrative processes, and this knowledge, combined with my academic background, will give me a sound basis to consider questions relating to statutory interpretation and judicial review of agency action. These matters, of course, are critically important to any judge sitting on the D.C. Circuit.

As this short summary suggests, my professional life has been varied, but I like to think profitably so. It is the very combination of these seemingly disparate experiences, each not only adding to but interacting with the others, that gives my legal career what this question calls its "general character." I believe that my attempt to mesh the scholarly and the practical -- or to put the formulation somewhat differently, the theoretical, institutional, and doctrinal -- would serve me well as an appellate judge. In particular, my experiences in legal practice, academia, and government would give me a strong ability to analyze and decide the constitutional, statutory, and regulatory issues that form the core of the D.C. Circuit's caseload.

- b. Describe your typical clients, and mention the areas, if any, in which you have specialized.**

As noted in part (a) of this question, clients for whom I worked during my years as an associate in a law firm included business entities in civil litigation, press organizations defending themselves in libel and related actions, and white collar criminal defendants.

11. With respect to the last five years:

- a. Did you appear in court regularly, occasionally or not at all? If the frequency of your appearances in court has varied during this period, describe each such variance, giving the dates thereof.**

Not at all.

- b. What percentage of these appearances was in:**

- 1) Federal courts.**
- 2) State courts of record.**
- 3) Other courts.**

Not applicable -- see above.

- c. What percentage of your litigation was:**

- 1) Civil.**
- 2) Criminal.**

Not applicable -- see above.

- d. State the number of cases you tried to verdict or judgment (rather than settled) in courts of record, indicating whether you were sole counsel, chief**

counsel, or associate counsel.

Not applicable -- see above.

e. What percentage of these trials was:

1) Jury.

2) Non-jury.

Not applicable -- see above.

f. If you believe the responses 11(a) through 11(e) do not reflect your experience, please describe any experience which you consider the equivalent of trial experience.

Although I have not litigated cases in the last five years, my experiences in academia and government provide a strong foundation to serve as a judge on the D.C. Circuit. My response to question 10 explains in general terms the nature of these activities and notes their relation to the practice of judging. I provide below further detail about a few of these experiences:

(i) Tobacco. I led the Administration's inter-agency effort to analyze all legal and regulatory aspects of the tobacco settlement proposed in June 1997. The working groups I chaired considered the settlement's provisions on FDA jurisdiction, liability relief, and antitrust exemptions. These groups also considered all constitutional challenges that could be brought to the proposed legislation and settlement agreement. When Senator McCain tried to move tobacco legislation the next year, I took part at various stages in the legislative process in discussions and negotiations about the content of the legislation. I again focused on the bill's regulatory and legal aspects.

(ii) Welfare Reform. I worked extensively on welfare reform issues in both the Counsel's Office and the Domestic Policy Council. In the Counsel's Office, prior to passage of the welfare law, I provided legal advice on waivers and other executive actions to accomplish welfare reform. I helped prepare, for example, an executive directive requiring every participant in the then-existing JOBS program to commit to working within two years or face sanctions; similarly, I worked on directives to strengthen efforts to enforce federal child support laws (including through stricter requirements of paternity establishment) and to keep teen-age mothers on welfare in school. After Congress passed, but before the President signed the welfare law, I provided advice on the constitutionality of certain provisions. Finally, as Deputy of the Domestic Policy Council, I participated in numerous aspects of the law's implementation, including the development of a major rule that elucidates the law's many complex provisions.

(iii) Guidelines on Religious Expression in the Workplace. While in the Counsel's office, I helped to prepare "Guidelines on Religious Exercise and Religious Expression in the Federal Workplace." These detailed guidelines, developed in conjunction with representatives of the Christian Legal Society, People for the American Way, and American Jewish Congress, enunciated three broad principles: that federal employers should permit employees to engage in personal religious expression to the greatest extent possible; that federal employers may not discriminate in employment on the basis of religion; and that federal employers must reasonably accommodate employees' religious practices. Making these guidelines acceptable to a wide-ranging coalition of religious groups, the Department of Justice, the Equal Employment Opportunity Commission, the Office of Personnel Management, and every other federal employer was as difficult a project as any I have encountered in government.

12. Summarize your experience in court prior to the last five years, indicating as to that period:

a. whether your appearances in court were more frequent or less frequent.

I appeared in court occasionally when I worked at Williams & Connolly.

b. any significant changes in the percentages stated in your answers to question 11(b), (c), and (e).

All my appearances were in civil litigation and almost all were in federal court.

c. Any significant changes in the number of cases per year you tried to verdict or judgment (rather than settled) in courts of record as sole counsel, chief counsel, or associate counsel.

I have never tried a case to verdict or judgment.

13. Describe ten of the most significant litigated matters, or matters that would be representative of your litigation experience, which you personally handled and give the citations, if the cases were reported. Give a capsule summary of the substance of each case, and a succinct statement of what you believe to be the particular significance of the case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case, (a) the dates of the trial period or periods, (b) the name of the court and the judge before whom the case was tried, © the individual name, address and telephone numbers of co-counsel and of counsel for each of the other parties.

The following ten cases are representative of my litigation experience as an associate at Williams & Connolly between 1989 and 1991. Because the cases are now almost ten years old and because in some of the cases, the partner handled contacts with opposing counsel, I suspect that a number of the opposing counsel listed will not remember me. This will certainly be true of the appellate cases listed, where my principal job was to draft the briefs we submitted.

(a) Federal Realty Investment Trust v. Pacific Insurance Co., No. R-88-3658. We represented a real estate investment trust in an action against an insurer for the costs of defense associated with a prior litigation. I began work on the case in the middle of the litigation; I did some late discovery and drafted most of the pre-trial motions. On the eve of trial, Judge Norman Ramsey of the U.S. District Court for the District of Maryland ruled in favor of our position on the appropriate standard for allocating defense costs between covered and uncovered parties and claims (760 F. Supp. 533 (1991)). This ruling immediately produced a settlement favorable to our client.

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(b) In re Seatrain Lines, Inc., Nos. 81 B 10311, 81 B 10916, 81 B 11059, 81 B 12345, 81 B 12525, 81 B 11845, 81 B 11004, 81 B 11512. We represented Seatrain Lines, Inc., a debtor in bankruptcy, in U.S. Bankruptcy Court in the Southern District of New York (Judge Burton Lifland presiding) in connection with an application by Chase Manhattan Bank and Milbank, Tweed, Hadley & McCloy for legal fees associated with the bankruptcy case. In response to the filing of the fee application, our client counterclaimed against Chase for the recovery of the costs of preserving and disposing of certain properties subject to Chase's security interest. I handled some of the discovery and drafted most of the pleadings. When the court denied Chase's motion to strike our counterclaim (and a subsequent motion for reconsideration), the parties settled on terms favorable to our client.

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(c) Toyota of Florence, Inc. v. Lynch, Nos. 4-89-594-15, 4-89-595-15.

We represented Southeast Toyota Distributors, Inc. in a suit brought by one of its franchisees alleging fraud, intentional interference with contract, violations of RICO, and a host of other claims. I drafted numerous pleadings in the case, including an opposition to the plaintiff's motion to remand (granted by Judge Hamilton of the U.S. District Court for South Carolina at 713 F. Supp. 898 (1989)), as well as motions to dismiss and discovery motions (ruled on by Judge Edwin Cottingham of the Court of Common Pleas for Darlington County). I also handled some of the discovery. I left the firm prior to trial. Ultimately, a verdict for the plaintiff was dismissed on appeal.

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No telephone number listed

(d) Byrd v. Randi, No. MJG-89-636. We represented defendant Montcalm Publishing Corp. in a libel action arising from an allegation that the plaintiff was in prison for child molestation. The case presented important issues relating to the “libel-proof plaintiff” doctrine, the definition of a “limited purpose public figure,” and the actual malice standard. I did most of the discovery, drafted our summary judgment motion and other pleadings, and argued the summary judgment motion before the district court. After initially denying the motion, Judge Marvin Garbis of the U.S. District Court for the District of Maryland dismissed the case a few months later on a motion for reconsideration.

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(e) In Re Application of News World Communications, Inc., Nos. 89-3160, 89-212. We represented the Washington Post and WRC-TV in this effort to compel release to the public of unredacted transcripts of audiotapes to be received in evidence at a criminal trial. (The underlying trial, United States v. Edmond, was a major local news story in Washington.) I argued motions before Judge Charles Richey of the U.S. District Court for the District of Columbia to compel release of the transcripts and to prevent redaction. (During my time at Williams & Connolly, I argued a number of these access motions for the Post and other media entities, as well as a number of motions to quash subpoenas on reporters for notes or testimony.) Judge Richey granted both motions, with the latter

reported at 17 Media L. Rep. 1001 (1989). The Court of Appeals for the D.C. Circuit, with Judges Wald, Silberman, and Sentelle hearing argument, denied a motion to stay this order (17 Media L. Rep. 1004 (1989)).

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(f) J. Odell Anders v. Newsweek, Inc., No. 90-715. We represented Newsweek, Inc. on appeal from a jury verdict in its favor in a libel action filed in the Southern District of Mississippi. The case raised questions about the actual malice standard, as well as numerous evidentiary issues. I drafted the appellate brief urging affirmance. The U.S. Court of Appeals for the Fifth Circuit held in our favor by unpublished opinion (judgment reported at 949 F.2d 1159 (1991)).

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(g) Luke Records, Inc. v. Nick Navarro, No. 90-5508. We filed an amicus brief in the U.S. Court of Appeals for the Eleventh Circuit on behalf of the Recording Industry Association of America and numerous record companies, challenging the decision of the district court that the musical recording *As Nasty As They Wanna Be* was obscene under the standard set forth by the Supreme Court in Miller v. California. I drafted the brief in the case, which stressed the difficulty of holding music obscene under prevailing constitutional law. Judge Lively, joined by Judges Anderson and Roney, reversed the district court's decision (960 F.2d 134 (1992)).

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(h) Bagbey v. National Enquirer, No. CV 89-2177. We represented the National Enquirer in this small libel action brought by a person mistakenly identified in the publication as being Jimmy Swaggert's father. I drafted all pleadings and did all

discovery in the case, which began in Louisiana state court but which we removed to the U.S. District Court for the Western District of Louisiana (Judge F.A. Little, Jr.). We eventually settled the case on terms favorable to our client.

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(i) Chuang v. United States, Nos. 89-1309. We represented Joseph Chuang, a former bank president, on his appeal from a criminal conviction for numerous counts of bank fraud. The principal issues in the case concerned the propriety of two warrantless searches of the bank, one by the Office of the Comptroller of the Currency and one by the FDIC. I drafted most sections of the brief, which argued among other matters (1) that the statute authorizing the OCC's search failed to provide a constitutionally adequate substitute for a warrant, as required by the Supreme Court, and (2) that the FDIC's search was invalid because it went beyond the bank premises into Chuang's law firm offices. The Second Circuit affirmed the conviction, with Judge Timbers writing and Judges Newman and Altimari joining (897 F.2d 646 (1990)).

Co-Counsel: Robert S. Litt

P6/(b)(6)

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(j) United States v. Jarrett Woods. We represented the former head of the Western Savings Association, a failed savings and loan, in both a grand jury investigation and a number of civil suits brought against him. The Federal Home Loan Bank Board had declared the S&L insolvent and placed it in receivership after discovering various suspect real estate loans. In addition to trying to keep the civil suits at bay, we tracked the grand jury investigation of Woods closely for more than a year -- interviewing each of the many people brought before the grand jury -- before Woods became unable to afford the representation. Woods was subsequently indicted and convicted of numerous counts of bank fraud.

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Because each of the above ten cases is eight to ten years old, I am listing below members of the legal community with whom I worked while at the University of Chicago or the White House.

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14. a. **Have you ever held judicial office? If so, give dates and details including the courts involved, whether elected or appointed, periods of service, and a description of the jurisdiction of each of such courts with any limitations upon the jurisdiction of each court.**

No.

- b. Have you ever held public office other than judicial office? If so, give details, including the office involved, whether elected or appointed, and the length of your service, giving dates.**

I have served as a Presidential appointee since July 1995, first as Associate Counsel to the President (7/95-12/96) and then as Deputy Assistant to the President for Domestic Policy and Deputy Director of the Domestic Policy Council (1/97-6/99). As Associate Counsel, I provided legal (including constitutional) advice to White House staff on a wide range of issues, including welfare reform, campaign finance reform, law reform, and church-state relations. As Deputy Assistant for Domestic Policy, I developed policy for the President on issues including education, health, law enforcement and criminal justice, immigration, welfare, and tobacco. In many instances, this work included a significant legal component, as when I coordinated the Administration's response to the complex constitutional and regulatory questions raised by the proposed tobacco settlement and subsequent legislative proposals. I have described these activities more fully in my responses to questions 10 and 11(f).

In addition, I served as Special Counsel to the Senate Judiciary Committee, then chaired by Senator Joseph Biden, during the confirmation hearings for Judge (now Justice) Ruth Bader Ginsburg. In that position, I advised Senator Biden of the nominee's judicial record and legal philosophy, briefed him on current constitutional issues, and proposed lines of questioning for the hearing.

- 15. Have you ever been an unsuccessful candidate for elective, judicial, or other public office? If so, give details, including dates.**

No.

- 16. Have you ever been engaged in any occupation, business or profession other than the practice of law or holding judicial or other public office? If so, give details, including dates.**

I worked on the presidential campaign of Michael Dukakis from July to November 1988.

- 17. Are you now an officer or director or otherwise engaged in the management of any business enterprise?**

No.

- a. If so, give details, including the name of the enterprise, the nature of the business, the title or other description of your position, the nature of your duties and the term of your service.**

Not applicable.

- b. **Is it your intention to resign such positions and withdraw from any participation in the management of any such enterprises if you are nominated and confirmed? If not, give reasons.**

Not applicable.

18. **Have you ever been arrested, charged, or held by federal, state, or other law enforcement authorities for violation of any federal law or regulation, state law or regulation, county or municipal law, regulation or ordinance? If so, give details. Do not include traffic violations for which a fine of \$100.00 or less was imposed.**

No.

19. **Have you, to your knowledge, ever been under federal, state or local investigation for possible violation of a criminal statute? If so, give particulars.**

No.

20. **Has a tax lien or other collection procedure ever been instituted against you by federal, state or local authorities? If so, give particulars.**

P6/(b)(6)

P6/(b)(6)

21. a. Have you ever been sued by a client? If so, give particulars.

No.

- b. Describe any claim or lawsuit which alleged an act or omission by you as a lawyer.

None.

- c. Have you ever been sanctioned pursuant to Rule 11 or pursuant to any other federal, state or local rule?

No.

22. Have you ever been a party or otherwise involved in any other legal proceedings? If so, give the particulars. Do not list proceedings in which you were merely a guardian ad litem or stakeholder. Include all legal proceedings in which you were a party in interest, testified as a witness, were named as co-conspirator or a co-respondent, and any grand jury investigation in which you figured as a subject, or in which you appeared as a witness.

P6/(b)(6)

23. Have you ever been disciplined or cited for a breach of ethics or unprofessional conduct by, or, to your knowledge, been the subject of a complaint to, any court, administrative agency, bar association, disciplinary committee, or other professional group? If so, give the particulars.

P6/(b)(6)

24. a. What is the present state of your health?

P6/(b)(6)

- b. Have you in the past ten years (i) been hospitalized due to injury or illness or (ii) been prevented from working due to injury or illness or otherwise incapacitated for a period in excess of ten days? If so, give the particulars, including the causes, the dates, the places of confinement, and the present status of the conditions which caused the confinement or incapacitation.

P6/(b)(6)

- c. Do you have a hearing or vision impairment or any other disability which might affect your ability to perform the duties of a trial or appellate judge? If so, please describe the disability and how your disability could be accommodated to allow you to perform the duties of a trial or appellate judge.

P6/(b)(6)

- d. When did you have your most recent general physical exam?

P6/(b)(6)

- e. Are you currently under treatment for an illness or physical condition? If so,

give details.

P6/(b)(6)

- f. Have you ever been treated for or had any problem with alcoholism or any related condition associated with consumption of alcoholic beverages or any other form of drug addiction or dependency? If so, give details.

P6/(b)(6)

- g. Have you ever been treated for or suffered from any form of mental illness? If so, give details.

P6/(b)(6)

25. Furnish at least five examples of legal articles, books, briefs, or other legal writings which reflect your personal work. If briefs are submitted, indicate the degree to which they represent your personal work. If there are reported opinions relevant to a submitted brief, give the citation to or a copy of any relevant appellate opinion.

I am attaching the following articles, essays, and book reviews:

Private Speech, Public Purpose: The Role of Governmental Motive in First Amendment Analysis, 63 *University of Chicago Law Review* 413 (1996).

When A Speech Code Is A Speech Code, 29 *University of California at Davis Law Review* 957 (1996).

Confirmation Messes, Old and New (Book Review), 62 *University of Chicago Law Review* 919 (1995).

The Changing Faces of First Amendment Neutrality, 1993 *Supreme Court Review* 29.

Pornography and Hate Speech After *R.A.V. v. St. Paul*, 59 *University of Chicago Law Review* 873 (1993).

A Libel Story (Book Review), 17 *Law & Social Inquiry* 197 (1993).

For Justice Marshall, 71 *Texas Law Review* 1125 (1993).

I am also attaching four briefs from cases listed in my response to question 13. I wrote most or all of the first draft of each of these briefs, although of course with substantial

input from the partner about the arguments to make. I do not recall exactly how much editing each partner did. I was not usually edited heavily while at Williams & Connolly, but the four partners on these cases are excellent lawyers and writers, and no doubt improved the final product.

Brief of Defendant-Appellant Kuang Hsung J. Chuang in Chuang v. United States.

Brief for Appellee/Cross-Appellant Newsweek, Inc. In Anders v. Newsweek, Inc.

Memorandum in Support of Motion of Defendants Montcalm Publishing Corporation, TZ Publications, and Stanley Wiater for Summary Judgment in Byrd v. Randi.

FRIT's Memorandum in Opposition to Pacific's Motion *in Limine* Regarding the Applicable Legal Standard for Allocation in Federal Realty Investment Trust v. Pacific Insurance Co.

26. **List all bar associations and professional societies of which you are a member and give the titles and dates of any offices which you have held in such groups. List also chairmanships of any committees in bar associations and professional societies, and memberships on any committees which you believe to be of particular significance (e.g., judicial selection committee, committee of censors, grievance committee).**

Member, American Bar Association

Member, U.S. Association of Constitutional Lawyers

Member, Board of Governors, Chicago Council of Lawyers, 1993-95

Public Member, Administrative Conference of the United States, 1994-95

27. **List all organizations and clubs other than bar associations or professional associations or professional societies of which you are or have been a member, including civic, charitable, educational, social, and fraternal organizations, and give dates of membership, offices held and honors bestowed.**

As a result of charitable contributions, I am a member of the Princeton University and Harvard Law School Alumni Associations and the National Partnership for Women and Families. Also as a result of charitable contributions, I have been a member in the past of the ACLU (1991-95) and a number of public radio or television stations.

28. **List any honors, prizes, awards or other forms of recognition which you have received (including any indication of academic distinctions in college or law school) other than those mentioned in answers to the foregoing questions.**

University of Chicago Graduating Class of 1993 Award for Teaching Excellence

J.D., magna cum laude

Supervising Editor, Harvard Law Review

Daniel M. Sachs Graduating Scholarship (provided to Princeton graduate for two years of study at Oxford)

A. B., summa cum laude

Phi Beta Kappa

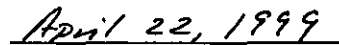
29. Describe any pro bono or community service activities in which you have engaged.

Between 1993 and 1995, I served as a member of the Board of Governors of the Chicago Council of Lawyers, attending regular meetings of the Board and participating in various Board-sponsored projects, such as the evaluation and rating of candidates for elective judicial office. In 1994, I provided pro bono assistance to an attorney filing a petition for certiorari in a voting rights case. For about nine months in 1994 and 1995, I served as pro bono counsel to the Bulletin for Atomic Scientists, a non-profit organization; in that capacity, I devoted a small amount of time to sorting out some legal details related to a small legacy to the Bulletin.

30. State any other information which may reflect positively or adversely on you, or which you believe should be disclosed in connection with consideration of you for the Federal Judiciary.

None.


Signature


Date

AMERICAN BAR ASSOCIATION
STANDING COMMITTEE ON FEDERAL JUDICIARY

WAIVER OF CONFIDENTIALITY

I hereby waive the privilege of confidentiality with respect to any information which concerns me, including any complaints erased by law, and is known to, recorded with, on file with or in the possession of any governmental, judicial, disciplinary, investigative or other official agency, _____, * or any educational institution, or employer, and I hereby authorize a representative of the American Bar Association Standing Committee on Federal Judiciary to request and to receive any such information.

** Elena Kagan
ELENA KAGAN

April 22, 1999
Date

* Please insert the name of the appropriate state or federal authority, e.g. Board of Bar Overseers, Commission on Judicial Conduct, etc.

** Please type or print name under signature line.